

Ralph H. Palumbo
Philip S. McCune
Summit Law Group PLLC
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104-2682
(206) 676-7000

Stephen J. Hill
PARR WADDOUPS BROWN GEE & LOVELESS
185 South State Street, Suite 1300
Salt Lake City, UT 84111
Telephone: (801) 532-7840

Attorneys for Plaintiff Maplewood Software, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

MAPLEWOOD SOFTWARE, INC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

CASE NO. **CV-08-066-EFS**

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Maplewood Software, Inc. (“Maplewood”) brings this action against Defendant Microsoft Corporation (“Microsoft”), for damages and injunctive relief under state law and United States copyright law, as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction of this action under 17 U.S.C. § 501 and 28 U.S.C. §§ 1331 and 1338(a) because Maplewood has asserted claims arising under the copyright laws of the United States. As a result, this Court also has

1 supplemental jurisdiction over Maplewood's state-law claims under 28 U.S.C.
2 § 1367(a).

3 2. This Court also has supplemental jurisdiction over the state law claims
4 asserted herein under 28 U.S.C. § 1367 because those claims are so related to
5 claims in the action within the Court's original jurisdiction that they form part of
6 the same case or controversy.

7 3. Venue is proper in this district under 28 U.S.C. § 1391(b), because a
8 substantial part of the events or omissions giving rise to Maplewood's claims
9 occurred in this district.

10 **II. PARTIES**

11 4. Plaintiff Maplewood is a corporation organized and existing under the
12 laws of the State of Washington, with its principal place of business at 508 West
13 6th Avenue, Spokane, Washington. Maplewood develops and licenses of computer
14 software, and owns valuable intellectual property rights in its software, including
15 copyrights.

16 5. Defendant Microsoft is a corporation organized and existing under the
17 laws of the State of Washington, with its principal place of business at One
18 Microsoft Way, Redmond, Washington. Microsoft also develops computer
19 software, including operating systems and applications, and licenses its products
20 throughout the world.

21 **III. BACKGROUND**

22 6. On November 11, 1999, Maplewood accepted a Purchase Order
23 968340 from Microsoft for development of one unit of a SQL database for
24 Microsoft's NetDocs group that came to be called the TUPLE database. Microsoft
25 and Maplewood agreed to a number of changes to the Purchase Order.

1 Maplewood successfully completed TUPLE, which Microsoft accepted, in early
2 2001.

3 7. Maplewood has complied with the Copyright Act relating to, owns the
4 copyright in, and has obtained a Certificate of Copyright Registration for the
5 TUPLE database. The Copyright Registration Number for TUPLE is
6 TX 6,496,877.

7 8. TUPLE is part of a build tool Microsoft calls SNAP, or Shiny New
8 Automation Process. SNAP was designed to control the execution of large
9 complex jobs on a network of computers. Its primary use is to manage building
10 software executables from source code and testing the executables once built.

11 9. Under Microsoft's software development process, software
12 executables are frequently produced for quality assurance purposes. SNAP allows
13 this process to be completed with dramatic efficiency by enabling software
14 executables to be tested simultaneously on a large number of computers, possibly
15 more than 500 computers at once. The TUPLE database is the key to increasing
16 the number of computers that may be simultaneously deployed in the testing
17 process.

18 10. The core of the SNAP system is in two SQL server databases. The
19 first, the TUPLE database, coordinates the work done by each computer in the
20 testing process. The second, called SNAP, prioritizes the various test requests,
21 delivering instructions to the TUPLE database with each test effort.

22 11. In February of 2006, Maplewood learned for the first time that there is
23 an internal support alias at Microsoft for SNAP and that "a lot of teams are using
24 it," including the Windows development team.

1 12. A book published in 2006 by a former Microsoft employee, Vincent
2 Maraia, entitled “The Build Master: Microsoft’s Software Configuration
3 Management Best Practices,” reports that Microsoft has been using SNAP for
4 years, and plans to ship a tool that is a variation of this tool.

5 13. On information and belief, Microsoft’s current version of SNAP
6 incorporates the TUPLE database essentially unchanged from the product
7 Maplewood delivered in 2001.

8 **FIRST CLAIM FOR RELIEF**
9 **(COPYRIGHT INFRINGEMENT)**

10 14. Maplewood repeats and realleges each of the foregoing allegations.

11 15. Under Purchase Order 968340, Microsoft ordered one unit of the
12 TUPLE database, and has the right to use one unit of TUPLE. The Purchase Order
13 granted Microsoft no right to make copies of TUPLE.

14 16. Microsoft has infringed Maplewood’s copyright in the TUPLE
15 database. Microsoft’s infringing conduct has included, without limitation, the
16 unauthorized copying of Maplewood’s copyrighted software, in violation of
17 Section 106 of the Copyright Act of 1976, 17 U.S.C. § 106.

18 17. By reason of the foregoing, Maplewood asserts a claim against
19 Microsoft for injunctive and monetary relief under 17 U.S.C. §§ 502 through 505.

20 18. The amount of damages that Maplewood has suffered as a result of
21 Microsoft’s copyright infringement will be proven at trial.

22 19. Maplewood is also entitled to recover its costs, including reasonable
23 attorneys' fees as part of costs, under 17 U.S.C. § 505.

1 **SECOND CLAIM FOR RELIEF**
2 **(BREACH OF CONTRACT)**

3 20. Maplewood repeats and realleges each of the foregoing allegations.

4 21. Microsoft breached the terms of the Purchase Order by its unlicensed
5 copying of the TUPLE database.

6 22. As a result of such breach, Maplewood has suffered damages in an
7 amount of equal to the value of such copies, which shall be proven at trial.

8 **THIRD CLAIM FOR RELIEF**
9 **(UNJUST ENRICHMENT)**

10 23. Maplewood repeats and realleges each of the foregoing allegations.

11 24. Microsoft has been enriched without cause by virtue of its conduct
12 and is required to compensate Maplewood to extent that it has been enriched.

13 25. The amount of damages that Maplewood has suffered as a result of
14 Microsoft's unjust enrichment will be proven at trial.

15 **FOURTH CLAIM FOR RELIEF**
16 **(CONVERSION)**

17 26. Maplewood repeats and realleges each of the foregoing allegations.

18 27. Microsoft's conduct described above, including its unauthorized
19 copying of Maplewood's TUPLE database software, constitutes conversion of
20 Maplewood's property.

21 28. The amount of damages that Maplewood has suffered as a result of
22 Microsoft's conversion will be proven at trial.

23 **IV. PRAYER FOR RELIEF**

24 WHEREFORE, Maplewood prays for judgment against Microsoft as
25 follows:
26

1 A. Under Maplewood's First Claim for Relief, awarding Maplewood, at
2 its election, either Maplewood's actual damages and Microsoft's profits, as
3 provided by 17 U.S.C. § 504(b); and permanently enjoining Microsoft, and those
4 participating or acting in concert with it, from copying or using more than one
5 copy of the TUPLE database software.

6 B. Under Maplewood's Second, Third and Fourth Claims for Relief,
7 awarding Maplewood all amounts that Maplewood is entitled to recover by reason
8 of Microsoft's breaches of contract, unjust enrichment or conversion, plus interest
9 thereon, as such amounts and interest are established on at trial;

10 C. Under all Claims for Relief, awarding Maplewood any additional
11 damages that the Court deems just under the circumstances of the case;

12 D. Awarding Maplewood prejudgment and other interest as allowed by
13 law;

14 E. Awarding Maplewood its allowable costs and reasonable attorneys'
15 fees; and

16 F. Awarding Maplewood such other and further relief as the Court
17 deems proper.

1 DATED this 15th day of February, 2008.

2 SUMMIT LAW GROUP PLLC
3 Attorneys for Plaintiff Maplewood
4 Software, Inc.

5 By /s/ Philip S. McCune
6 Ralph H. Palumbo, WSBA #04751
Philip S. McCune, WSBA #21081

7 And by:

8 Stephen J. Hill
9 PARR WADDOUPS BROWN
10 GEE & LOVELESS
11 185 South State Street, Suite 1300
12 Salt Lake City, UT 84111
13 Telephone: (801) 532-7840

14 Attorneys for Plaintiff Maplewood
15 Software, Inc.